

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC-SDNY
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THOMAS J. OLSEN, *individually and on
behalf of all other persons similarly situated,*

Plaintiffs,

v.

LEVEL 28 NUTRIDRIP LLC,

Defendants.

No. 20-CV-9565 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

On November 13, 2020, Plaintiff brought this action under the Americans with Disabilities Act, alleging that Defendant's website is not fully accessible to Plaintiff and other blind or visually impaired people. *See* Dkt. 1. The docket does not reflect that the complaint and summons were served. "The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m)." Fed R. Civ. P. 4(c)(1). "If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m).


On February 12, 2021, after the 90-day deadline to complete service had passed, the Court *sua sponte* granted Plaintiff an extension, directing Plaintiff to complete service and to submit proof of service on the docket no later than February 26, 2021. *See* Dkt. 6. The Court warned that "[f]ailure to do so will result in dismissal of the action." *Id.* Plaintiff neither complied with this order nor requested an additional extension of time in which to complete service. Needless to say given his silence, Plaintiff has not demonstrated good cause for the

failure to serve process within the time allotted by the Federal Rules of Civil Procedure and this Court's orders.

More than 90 days having passed since the filing of the complaint, and the Court having subsequently "order[ed] that service be made within a specified time," the action is hereby dismissed without prejudice. Fed. R. Civ. P. 4(m). *See also Harmon v. Bogart*, 788 F. App'x 808 (2d Cir. 2019); *Melendez v. City of New York*, 12-CV-9241 (AJN), 2014 WL 6865697, at *1 (S.D.N.Y. Dec. 4, 2014) ("Rule 4(m) plainly states that in such instances [involving failure to serve] a court may, on its own, dismiss the complaint without prejudice so long as it has first given notice to the plaintiff."). The Clerk of Court is respectfully directed to close this case.

SO ORDERED.

Dated: March 1, 2021
New York, New York



Ronnie Abrams
United States District Judge